

815 CMR: COMPTROLLER'S DIVISION

815 CMR 9.00: COLLECTION OF DEBTS

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815 CMR 9.00: COLLECTION OF DEBTS

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9.01: Purpose, Application and Authority

(1) Purpose. 815 CMR 9.00 governs the collection of non-tax revenue accounts receivable and debts owed to the State and not otherwise provided for by law. 815 CMR 9.00 provides State Departments with access to services that promote the efficiency and effectiveness of collecting debts owed to the State, thereby enhancing its non-tax revenues. 815 CMR 9.00 provides both for interdepartmental assistance from the Office of the Comptroller to intercept State payments due to debtors and for procurement and contract management of contingent fee contracts for debt collection services.

(2) Application. 815 CMR 9.00 applies to all State Departments seeking to collect non-tax revenue accounts receivable and debts owed to the State, including agencies, subdivisions, offices, boards, commissions, committees, councils, boards or institutions of the Executive Department, the Institutions of Higher Education, the Judicial and Legislative Branches and Constitutional Offices. The Office of the Comptroller will interpret 815 CMR 9.00 and take any actions necessary to carry out the purposes of 815 CMR 9.00 including waivers or amendments of these provisions, issuing additional policies, procedures and forms to be used by Departments. Absent separate statutory authority, no Department may intercept payments owed debtors, or enter into a contract for debt collection services except as provided in 815 CMR 9.00. Departments seeking to use intercept and debt collection services for the discharge of debts and accounts receivable must use the State accounting system or other appropriate system as prescribed by the Comptroller.

(3) Authority. 815 CMR 9.00 is promulgated under the authority of M.G.L. c. 29,

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§ 29D, M.G.L. c. 7A, § 3, § 8, §15 and §18, and M.G.L. c. 62D.

9.02: Definitions

Accounts Receivable. Revenues earned but not yet collected for legislatively authorized charges for services performed, goods provided, or events, such as judgments and recoveries, fines, fees for licenses and permits, charges for services, investment income, operating leases or any other obligations owed to and being pursued for collection by a Department. Accounts receivable shall also include, but are not limited to loans, notes and amounts due from employees, other State Departments, cities, towns and political subdivisions of the State and from Federal government grants and contracts. An accounts receivable that is unpaid by the due date of its initial billing shall be considered a "debt".

Affidavit. A certification by a Department Head that the name of the debtor, the amount of the debt and the existence of a debt are accurate. The Comptroller shall designate how a Department Head will meet the requirement of providing an affidavit certifying that a debt is accurate.

Aging. A systematic method of classifying and reporting the number of days between the initial origination date of a bill and the date that the payment of the bill is due.

Attorney General (also referred herein as "AGO"). The Office of the Attorney General of the State, established by M.G.L. c. 12, § 1.

Audit Trail Reports. Reports produced from data in the official State accounting system. The Comptroller shall from time to time designate certain reports as audit trail reports and such reports shall be relied upon for audit and other purposes.

Bad Debt. An outstanding debt, obligation or liability to pay or return something to the State that remains uncollected after all available efforts to collect have been exhausted. For the purposes of 815 CMR 9.00, "bad debt" may also be referred to as an "uncollected receivable".

Collection. An action taken by a Department to satisfy a legislatively authorized account receivable.

Collection Accounts Contract. A contract issued by the Office of the Comptroller which is used by a Department to obtain the services of an Authorized Collection Agency to collect a debt.

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Collection Agency. A duly licensed entity which has been authorized under a Statewide Contract assist Departments in collection efforts for non-tax revenue, for a Contingent Percentage Fee of debts actually collected and recorded on the state accounting system.

Contingent Percentage Fee. A payment under which a Collection Agency is paid a percentage fee "contingent" on the amount of delinquent accounts receivable collected by the Collection Agency that is remitted to the Department and recorded in the state accounting or other appropriate accounting system. Contingent Percentage Fees should be added to a Debt when submitting the Debt to a Collection Agency.

Debt. An outstanding account receivable, obligation or other liability to pay or return something to the State.

Debtor. An individual, sole proprietor, corporation, partnership, organization, business trust or association or two or more persons, or other legal entity which owes an accounts receivable, obligation or other liability to pay or return something to the State.

Delinquent Account Receivable. An account receivable owed the State which remains unpaid on the day following its payment due date. Delinquent accounts receivable may also be referred to as "debts".

Department. State agencies, subdivisions, offices, boards, commissions, committees, councils, boards or institutions of the Executive Department, the Institutions of Higher Education, the Judicial and Legislative Branches and Constitutional Offices, and any other eligible entity approved by the Office of the Comptroller. Such eligible entity includes any city or town or state authority as defined in M.G.L. c. 29, §1.

Discharge. The dissolution of a debt, either through full payment, intercept, settlement or write-off.

Disputed Debt. Occurs when a debtor notifies a Department that there is a disagreement as to the identity of the debtor, the amount or the existence of a debt.

Due Date. The date when payment of an account receivable is due, usually 30 calendar days from the date an accounts receivable event occurs or its billing date; or as established by contractual terms or statute.

Dunning Notice. A written notice appearing on an invoice or statement mailed or personally delivered to a debtor providing notice that payment for an account receivable or a debt is past due.

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Intercept. An action performed by the Office of the Comptroller to discharge a delinquent debt owed the State from other funds owed or scheduled to be paid to a debtor, including tax refunds pursuant to M.G.L. c. 62D.

Intercept Fee. A fee of \$15.00 for each intercept added by the Office of the Comptroller and an additional fee for each state tax refund intercept added by the Department of Revenue.

Judgment. A court order ruling that the debtor is obligated to pay the State a specific sum.

Late Charges. Any charges, fees interest of other amounts authorized to be added to a Debt that is past due, Intercepted or sent to Debt Collection. Late charges include Intercept Fees, which may also be referred to as Commonwealth Fees.

Maximum Obligation. The limit of a Department's or Eligible Entity's potential financial obligation to a Collection Agency under a Collection Accounts Contract. The State shall not be obligated for any amounts incurred by a Collection Agency which exceed the maximum obligation identified in a Collection Accounts Contract.

Non-Tax Revenue. Funds derived as a result of legislatively authorized fines, fees, licenses, permits, assessments, third party payments, interest, overpayments and other accounts receivable owed the State with certain exceptions such as revenues from taxes, lottery operations and State investments.

Payment Plan Agreement. A written installment plan for collecting an outstanding debt agreed to by a Department and debtor.

Revenue. All amounts due and collected from State taxes, agency fees, fines, assessments, charges, and other Departmental revenues, retained revenues, federal grants, federal reimbursements, lottery receipts, court judgments and investment earnings.

Settlement. Upon certification by the Department Head and approval by the Office of the Comptroller, an agreement between the Department and a debtor to accept partial payment of a debt as full and final discharge of the debt.

State. The Commonwealth of Massachusetts.

Statewide Contract. A contract executed by authorized collection agencies and the

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Office of the Comptroller for the provision of debt collection services on behalf of all Departments. Collection Agencies agree to provide debt collection services in return for a specified Contingent Percentage Fee based upon the amount of delinquent accounts receivable collected by the Collection Agency that is remitted to the Department and recorded in the state accounting system or other appropriate system approved by the Comptroller.

Uncollected Receivable ("Bad Debt"). A debt which, after unsuccessful attempts at collection by a Department, is deemed uncollected by the Comptroller.

Write-Off. A transaction performed by the Office of the Comptroller removing an uncollected receivable from the State's financial records.

9.03: Availability of Debt Collection Services

The debt collection services provided pursuant to 815 CMR 9.00 shall be available for debts owed to a Department of a non-tax revenue nature, including but not limited to legislatively authorized fines, fees, licenses, permits, interest income, assessments, third party payments, and any other type of receivable that is capable of being collected with the exception of revenues specifically governed by separate statutes such as revenues from taxes, lottery operations, State investments, federal grants and reimbursements and Medicaid vendor overpayments. Collection Agencies shall conduct debt collection services in accordance with 815 CMR 9.00, 209 CMR 18.00 and 940 CMR 7.00, and any other state or federal laws governing the collection of debts.

9.04: Procurement of Statewide Contract for Debt Collection Services

(1) Procurement. A Statewide Contract Debt Collection Services shall be procured by the Office of the Comptroller in accordance with applicable procurement requirements.

(2) Litigation Services-Approval by Office of the Attorney General. As part of the procurement process, potential Contractors may be required to identify lawyers who will provide litigation services. A Collection Agency's lawyer(s) must be designated Special Assistants Attorney General (SAAG's) by the Attorney General's Office before any litigation services may be provided. If SAAGs will be required as part of the Statewide Contract, final awards of Statewide Contract for Debt Collection Services will be subject to the review and SAAG designation of a contractors legal staff by the Office of the Attorney General.

9.05 Department Internal Debt Collection Obligations

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(1) Obligation to Pursue Legislatively Authorized Accounts Receivable and Debts. Departments are responsible for making diligent efforts to collect legislatively authorized accounts receivable and debts due the State. Departments shall maintain detailed records for all accounts receivable, debts and other legislatively authorized charges for goods or services. Departments shall also maintain records of all damages or other monetary losses sustained by the Department.

(2) Internal Department Collection Efforts. A Department must comply with the following provisions outlining internal debt collection activities prior to the automatic assignment of a debt to the Office of the Comptroller for intercept and the assignment of the debt to a Collection Agency for collection:

(a) Location Assistance. If a Department can not locate the debtor to serve notice of a debt, the Department shall seek location assistance as prescribed by the Office of the Comptroller.

(b) Disputed Debts and Hearings. The procedures and time periods outlined in 815 CMR 9.05(2) shall be suspended at any time the Department receives written notice from a debtor of a disputed debt or a written request for a hearing. Departments shall comply with M.G.L. c. 30A, M.G.L. c. 66A, 801 CMR 1.00 and 801 CMR 3.00 when conducting a hearing that has been timely requested in writing by a debtor. The suspension of debt collection activities shall continue until the Department has completed a hearing, if one has been timely requested in writing by the debtor, or until the dispute is resolved between the Department and the debtor. If a hearing has not been timely requested in writing by the debtor, and the Department determines that the debtor's dispute is not supported by credible evidence, the Department may remove the suspension and continue with the debt collection activities.

(c) Initial Billing. A Department must transmit an initial bill to a debtor. The bill must include the name of the debtor, the authorized accounts receivable being charged, the amount of the bill, the date the bill was issued, the date that payment is due before it is considered delinquent and procedures for remittance of payment. Departments are responsible for ensuring and certifying the accuracy of the information contained in the bill.

(d) Dunning Notices. If the initial bill is not paid in full by the debtor by the payment due date, and the debt has not been disputed by the debtor, a Department must demonstrate diligent efforts to collect the debt. Diligent efforts shall include at a minimum, but shall not be limited to, three written billing and dunning notices in addition to the initial billing, and a final notice as follows:

1. 01 days past due dunning notice;
2. 30 days past due dunning notice;
3. 60 days past due dunning notice;

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4. 90 days past due final notice.

(e) Notice Requirements. Language informing the debtor of the following items must be contained in each of the first three dunning notices outlined in 815 CMR 9.05(2)(d):

1. Due Process Notice. Notice to the debtor of the right to either dispute the debt, or make a timely written application for a hearing under M.G.L. c. 30A, unless another review process is provided by law or regulation.

2. Notice of Discharge of the Debt Through Intercept. Notice that the debt remains unpaid, and the debtor fails to dispute the debt or request a hearing, that the debt will automatically be assigned to intercept from any other State payments that are due to the debtor, or scheduled to be paid to the debtor, including tax refunds under M.G.L. c. 62D.

3. Notice of Intent to Assign a Debt to a Collection Agency. Notice that the debt may be assigned to a Collection Agency for collection.

4. Notice of Late Charges. Notice that failure to pay may subject the Debt to Late Charges.

(f) Final Notice. The final 90 days past due notice outlined in 815 CMR 9.05(2)(d)4. shall contain language notifying the debtor that the debt has been referred for either intercept or to a Collection Agency for collection, or both.

(3) Payment Plans. A Department shall have the option, at any time during the debt collection process, to offer a debtor a payment plan to discharge a debt. A Department shall determine the terms and conditions for payment plans and may revoke a payment plan and continue the debt collection process at any time a debtor fails to timely meet a deadline for payment. A Department shall also enforce any court or administratively mandated payment plans.

(4) Fast Track to Attorney General's Office. At any point in the collection process when the Department has reason to believe the assistance of the Office of the Attorney General is essential to the successful collection of the debt, the Department may make contact the Office of the Comptroller to make a request for Attorney General assistance.

(5) Confidentiality of Debt Collection Information. Since debt and debtor information is of a highly personal nature, Departments are required to keep all information related to debts and debtors confidential. Departments are responsible for training staff to ensure that no information about any debt or debtor is disclosed for any reason except as authorized herein. Departments may allow access to debt and debtor information only to those staff necessary to process debt related transactions and correspondence. Departments are responsible for taking the necessary precautions to ensure the security of all files, systems and other filing or storage locations of debt and debtor information.

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9.06: Intercept of Debt by Office of the Comptroller

(1) Certification of Accuracy of Debts. A Department shall be responsible for verifying and certifying the accuracy of the name of any debtor and the amount of the debt. A Department must verify the accuracy of any debts identified in audit trail or other reports designated by the Office of the Comptroller for accounts receivable and debt collection management. The Department is responsible for immediately correcting any inaccurate data contained in designated audit trail or other reports for debt collection activities.

(2) A Department will have at least four opportunities over a 120 day period during its internal collection process to verify the accuracy of the debts State accounting system audit trail or other reports at the end of this period shall be considered by the Comptroller to be an affidavit by the Department Head that the debts which are automatically assigned for intercept at the Office of the Comptroller are accurate.

(3) Suspension of Collection Efforts for Disputed Debts. A Department must immediately suspend the debt collection process for any disputed debt, or whenever a written request for a hearing has been timely submitted. A Department must suspend any debt that can not be confirmed and certified as accurate. Unsuspended debts processed through the state accounting system will automatically be assigned to the Office of the Comptroller for intercept when the debt is 120 days past due. Therefore, a Department must suspend any debt that cannot be confirmed and certified as accurate. A debt that is automatically assigned to the Office of the Comptroller shall be deemed certified by the Department Head as accurate.

(4) Procedures for Exempting Certain Debts or Payments from Intercept. Departmental requests may be made to the Office of the Comptroller to exempt certain debts or types of payments from the intercept process will be reviewed on a case by case basis.

(5) Simultaneous Submission of Debt for Intercept and Debt Collection. Unsuspended debts processed through the state accounting system will automatically be assigned to the Office of the Comptroller for intercept when the debt is 120 days past due. Unless otherwise specified by the Department submitting the debt, all debts submitted for debt collection are simultaneously submitted to intercept and debt collection. Authorized Collection Agencies have the right to refuse and return debts to the submitting Department until intercept efforts are completed. Authorized Collection Agencies may only be compensated for fees from debt funds which the Agencies actually collect and deposit as prescribed by the Office of the Comptroller. Therefore, Authorized Collection Agencies that accept a debt that has been submitted simultaneously for

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intercept and debt collection assume the risk that the debt will be successfully intercepted in whole or in part by the Office of the Comptroller prior to the Agency's collection of the debt. In such event, the Agency shall not be entitled to any compensation for debt collection work performed.

(6) The Department and the Office of the Comptroller shall determine how long a debt will remain subject to intercept, and if debt collection is unsuccessful, if a debt should be discharged through a settlement or write-off.

9.07: Department Procedures to Retain Debt Collection Services

(1) Only Collection Agencies awarded Statewide Contracts pursuant to 815 CMR 9.04 are authorized to provide debt collection services for Departments. Departments must complete the internal collection activities outlined in 815 CMR 9.05 prior to assigning a debt to a Collection Agency.

(2) Collection Accounts Contract Requirements.

(a) Collection Accounts Contract. The Office of the Comptroller will publish a Collection Accounts Contract that will be used by Departments to retain a Collection Agency's services.

(b) Effective Date and Duration of a Collection Accounts Contract. A Collection Agency may not begin services, and a Department may not assign any debts, until the parties have executed a Collection Accounts Contract and it has been filed with the Office of the Comptroller. The duration of any Collection Accounts Contract shall not exceed the duration of the Statewide Contract, including any approved extensions.

(c) Scope of Services. The Collection Accounts Contract shall include a full and detailed description of the scope of services to be rendered by the Collection Agency including any minimum and mandatory requirements, specific criteria and standards for evaluating the Collection Agency's performance in relation to desired outcomes or objectives and provisions related to:

1. events or facts creating or concerning the assigned accounts receivable;
2. the type of account (consumer, commercial, third party or other);
3. the aging of the delinquent accounts receivable (not less than 120 days);
4. the amount or balance of the accounts to be assigned;
5. procedures for deposit of receipts;
6. the approved contingent percentage fee schedule applicable to the accounts;
7. the total amount of the debt which includes the amount of the debt and the Contingent Percentage Fee rate to be paid to the Collection Agency;
8. procedures for compensation;
9. procedures for monitoring litigation undertaken by the Collection Agency

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on behalf of the Department; and,

10. whether or not the debt is being submitted simultaneously for intercept and debt collection.

(d) Contingent Percentage Fees. Only the Contingent Percentage Fee rates approved in the award of a Statewide Contract may be incorporated into a Collection Account Contract as the "budget". Any payments made under a Collection Accounts Contract are contingent upon and subject to the Collection Agency's successful collection of the accounts receivable in accordance with the terms and conditions of the Collection Accounts Contract and the Statewide Contract. Whenever possible, the Department shall add the Contingent Percentage Fee rate to the amount of the debt to be collected by the Collection Agency. Unless otherwise provided by law, or as authorized in the Statewide Contract, no Contingent Percentage Fee payments shall be made for any debt collection services, including litigation services, that do not result in the collection of an accounts receivable.

(e) Litigation Services. Collection Agency litigation services are considered one type of available debt collection services. Collection Agencies may have a separate Contingent Percentage Fee rate approved for debt collection including litigation services, and debt collection without litigation services. Litigation services provided by the Collection Agency may not be separately billed or charged to the Department or added to the debt.

(f) Contract Managers. The Department and the Collection Agency shall each designate a contract manager for the Collection Accounts Contract. The contract manager for the Department shall be responsible for assisting the Office of the Comptroller in processing all transactions involved with the debt collection services, revenue receipts, refunds and payments to the Collection Agency. The Department contract manager shall be responsible for monitoring the Collection Agency's compliance with all terms of the Collection Accounts Contract. The Collection Agency's contract manager shall be responsible for monitoring all debt collection activities of the Collection Agency on behalf of the Department and providing any periodic reports or other information requested by the Department.

(4) Litigation Managers. A Department's Legal Counsel and the AGO shall be responsible for monitoring the litigation efforts undertaken on behalf of the State by Collection Agency SAAGs who have been approved by the AGO. Litigation by SAAGs may be undertaken only with the prior written approval of the Department.

(5) Partial Discharge or Write-Off. Collection Agencies shall not negotiate or settle a partial discharge of a debt except as instructed by the Department. Collection Agencies shall refer all uncollected debts to the Department for consideration for Write-Off or further action. Upon written notice to the Collection Agency, a Department may recall

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assigned accounts receivable or demand a temporary or permanent halt to collection activity by the Collection Agency.

(6) Department and Eligible Entity Accounts Receivable Management. It shall be a Department's responsibility to verify all accounts receivable returned by the Collection Agency and disputed by the debtor, during which time the Collection Agency shall cease contact with the debtor and the Department shall comply with the provisions of 815 CMR 9.05(2)(b).

(7) Settlement. Neither the Department nor the Collection Agency has authority to independently negotiate a settlement of a debt. In the event a Department determines that partial settlement of a debt is the most appropriate action, the Department shall request approval to negotiate a settlement of the debt from the Office of the Comptroller. Upon approval from the Office of the Comptroller the Department may instruct the Collection Agency to pursue settlement.

(8) Write-Off. Neither the Department nor the Collection Agency has authority to Write-Off bad debts. Bad debts must be referred directly to the Office of the Comptroller for Write-Off by the Department. Collection Agencies may not refer any debt directly to the Office of the Comptroller. The Department shall file necessary evidence and reports with the Office of the Comptroller certifying the bad debt and that diligent efforts have been made to collect the debt. The Office of the Comptroller may delegate Write-Off authority to Departments which have demonstrated sound business practice in their management of receivables, debt collection, and requests for write-offs as measured by adherence to Office of the Comptroller policy and procedures. This authority may not be delegated to a Collection Agency.

(9) Attorney General's Office: Litigation. The Attorney General may litigate debts owed the state, including but not limited to instances of multiple or chronic indebtedness to the state, cases involving several departments, cases in which the amount owed is of sufficiently large amount to warrant action by the Attorney General, and cases of suspected fraud. Referral of cases to the Office of the Attorney General shall be made only by the Comptroller. In such cases, the Department shall file necessary evidence and reports with the Office of the Comptroller in support of said referral.

(10) Office of the Comptroller Management of State Debt Collection Services. Pursuant to 815 CMR 9.00, the Office of the Comptroller shall be responsible for the oversight of debt collection activities in the State. The Comptroller shall take such actions as are necessary for the management of accounts receivable and debt collection activities by Departments. A Department's nonperformance or insufficient performance

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of the requirements of 815 CMR 9.00 will be grounds for revocation of the Department's authority to enter into Collection Accounts Contracts. The Comptroller may then delegate this authority to another Department or assume the responsibility directly.

9.08: Accounting Procedures and Collection Agency Payments

(1) All revenue collected for debts under 815 CMR 9.00 during the initial billing, dunning, intercept or debt collection process shall be recorded and processed through the state accounting system as prescribed by the Office of the Comptroller. The Office of the Comptroller will take all necessary steps to establish funds, subfunds, revenue accounts, expenditure accounts, retained revenue accounts and any other action necessary to support the collection of debts.

(2) Approval of the Office of the Comptroller is required for all transactions by which revenues collected under a Collection Accounts Contract are accounted to specified accounts in the state accounting system or other approved system.

(3) Approval of the Office of the Comptroller is required for all contingent percentage fee payments to a Collection Agency based upon successful collections of accounts receivable. No other payments may be made to a Collection Agency absent Office of the Comptroller prior written approval.

9.09: Disputes

All Statewide Contract or Collection Accounts Contract negotiations and disputes between a Department and a Collection Agency shall be resolved by the Department. The Department and the Collection Agency must make reasonable efforts to resolve the dispute within 30 days using all appropriate mechanisms, but in no event shall this resolution period extend beyond the 30th day of June in any fiscal year. If a Department and a Collection Agency are unable to resolve a dispute after reasonable efforts, either party may seek assistance from the Office of the Comptroller to resolve the dispute.

9.10: Severability

If any provision of 815 CMR 9.00 is found to be illegal, unenforceable or void, then Departments and Contractors shall be relieved of all obligations under that provision only, and all other provisions shall remain in full force and effect.

815 CMR: COMPTROLLER'S DIVISION
815 CMR 9.00: COLLECTION OF DEBTS

This is an unofficial version of this regulation. The official version of this regulation on file with the Secretary of State Regulations Division will control in the event of any discrepancy with the information contained in this document.

Please contact the Regulations Division to obtain an official version of these regulations at:

Telephone: (617) 727-2831 **Fax:** (617) 742-4822 or **Email:** regs@sec.state.ma.us.

Please click on the following link for additional contact information: <http://www.state.ma.us/sec/spr/sprcon.htm>.

REGULATORY AUTHORITY

815 CMR 9.00: M.G.L. c. 29, § 29D; c. 7A, § 3, §8, § 15, § 18 and c. 62D